IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

OP.No. 22480 of 1999(A)

PETITIONER:

N.BHAVANI AMMA, F.L.R LICENSEE
VIJAYA HOTEL & BAR,
KARUNAGAPPALLY.

BY ADV. SRI.ROY CHACKO

RESPONDENTS:
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1. STATE OF KERALA, REP. BY THE CHIEF SECRETARY TO GOVT. OF KERALA, SECRETARIAT, TRIVANDRUM.

2. THE CHIEF WELFARE FUND INSPECTOR, TRIVANDRUM.

3. THE WELFARE FUND INSPECTOR, ABKARI WORKERS WELFARE FUND BOARD, KOLLAM-691 012.

4. THE ASSISTANT EXCISE COMMISSIONER, KOLLAM.

BY ADV. SRI.K.K.BABU
R1 BY SPECIAL GOVT. PLEADER MR.C.T.RAVIKUMAR

THIS ORIGINAL PETITION HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.No.22480 of 1999

Dated, this the 6th day of September, 2007

JUDGMENT

K.T.Sankaran, J.

The reliefs sought for by the petitioner in this original petition are the following:

> "i) issue a declaration that the definition of Abkari worker in Section 2(a) of the Kerala Abkari Workers Welfare Fund Act 1989 to the extent it includes workers serving in bar hotels, for the purpose of fastening liability for payment of contribution under the Act is unconstitutional and void.
>
> ii) issue a writ of certiorari or any other appropriate writ, direction order calling for the records relating to Ext.P3 and quash the same.
>
> Iii) issue such other writ, direction or order which this Hon'ble court deems fit to pass in the circumstances of the case."

2. A batch of original petitions for identical reliefs came up for consideration before a Division Bench of this Court and by judgment dated 1st December, 2006 in O.P.No.15541 of 1999 and connected cases, the Division Bench disposed of the original petitions with the following directions:

> "3. Considering the entire facts and circumstances of the case we feel it would be appropriate that a direction be given to the Government to examine as to whether the employees are getting double benefits since they are covered by Central Act as well as State Act. Government would give an opportunity of being heard to the petitioners and similarly placed persons as well as their workers. Government would take a final decision with regard to the question as to whether there is overlapping the provisions and as to whether the employees would get double benefits because of the benefit given by Central Act as well as State Act. Let a decision be taken by the Government within a period of six months from the date of receipt of a copy of this judgment. The challenge against the vires of the Act is left open."

3. This original petition is also disposed of following the judgment of the Division Bench dated 1st December, 2006 and the same directions as are given in the judgment dated 1st December, 2006 shall follow in this original petition as well.

Consequently, C.M.P.No.37102 of 1999 is also dismissed.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns